A **KETUA PENGARAH HASIL DALAM NEGERI**

v.

BEE GARDEN SDN BHD

B HIGH COURT MALAYA, KUALA LUMPUR
ZALEHA YUSOF J
[JUDICIAL REVIEW NO: R1-14-03-2011]
1 JULY 2013

C ***REVENUE LAW:*** *Property tax - Assessment - Rebates given by taxpayer for disposal of property - Whether rebates formed part of consideration for disposal of property - Whether rebates reduced taxpayer's gains - Whether rebates amounted to tax avoidance - Real Property Gains Tax Act 1976, s. 25(2)*

D The appeal herein was by the Director General of Inland Revenue ('DGIR') against the deciding order of the Special Commissioners of Income Tax ('SCIT'). The appellant before the SCIT was Bee Garden Sdn Bhd ('Bee Garden'). Bee Garden entered into two
E sale and purchase agreements ('SPA') for the disposal of its two lots and had given rebates in the form of a deduction from the purchase price to the purchasers. However, the SPA did not disclose the amount of the rebates given. The DGIR raised the assessment on both lots in which it adjusted the disposal price by
F disallowing the deduction of the rebate from the purchase price resulting in the appellant being required to pay additional sum as tax and penalties pursuant to s. 21(4) of the Real Property Gains Tax Act 1976 ('the Act'). Bee Garden, being dissatisfied with the assessments, filed an appeal to the SCIT. SCIT allowed the
G appeal and hence, this application by DGIR. The issues to be determined by the court in this application were, *inter alia*: (i) whether the conclusion made by the SCIT before arriving at the deciding order was correct as the conclusion contradicted its earlier findings: (ii) whether for the purpose of the Act, the
H disposal of the lots should be the declared selling price as per the SPA less the amount of rebate or the declared selling price as per the SPA.

Held (dismissing appeal):

I **(1)** There was inconsistency between the deciding order and the grounds given by the SCIT. In para. 9 of the case stated, the SCIT concluded that there was no evidence of rebate as it

was not stated in the SPA, whereas in para. 6, it had made a finding of facts that amongst the fact that were proven and admitted were rebates given by Bee Garden to the purchasers and that the actual amount received by Bee Garden was the amount after deducting the rebate which was less than the amount stated in the SPAs. Hence the SCIT had clearly erred and in coming to the conclusion in para. 9, had acted without evidence or upon a view of the facts which could not be reasonably entertained. (paras 11 & 12)

(2) The fact that the ground of decision of the case stated was ordered, by the previous judge, to be re-drafted to be in line with the deciding order meant that the learned judge was of the view that the ground of decision was wrong. However, the Order made by the learned judge, on the application of Bee Garden, was not appealed against by the DGIR. Therefore, the Order still stands and is binding on them. The fact that the Order could not be discharged as a whole as the members of the panel of the SCIT who heard the matter had all retired did not affect the validity or the binding effect of the Order. (paras 16 & 17)

(3) The expression "consideration" in its plain and ordinary sense, must mean an amount or a sum actually paid by the purchasers of the said lots to the taxpayer *ie*, Bee Garden, in connection with the disposal of the said lots. In the light of the findings of fact by the SCIT, there can be no dispute that the rebates given did not form part of the amount actually paid by the purchasers of the said lots to the taxpayer *ie*, Bee Garden. Consequently, the rebates could not form part of the consideration received by Bee Garden in connection with the disposal of the lots. (para 21)

(4) The effect of the finding of facts by the SCIT as found in para. 6 of the case stated makes the fact that the amounts of the rebate were not disclosed in the SPAs or in a supplemental agreement thereto is legally inconsequential. (para 22)

(5) Section 140(1) of the Income Tax Act 1967, which is in *pari materia* with s. 25(2) of the Act, does not apply where the taxpayer obtains a tax advantage by reducing his income or by incurring expenditure in circumstances in which the taxing statute affords a reduction in tax liability (*Sabah Berjaya Sdn*

A *Bhd v. Ketua Pengarah Jabatan Hasil Dalam Negeri*, foll). In the instant case, the rebates reduced Bee Garden's gains in circumstances in which the Act by way of para. 5(1) of Schedule 2 to the Act clearly affords a reduction in tax liability. Since the SCIT found that the rebates were given by
B the taxpayer to the purchasers of the said lots, this was clearly not a case which s. 25(2) of the Act applies. (paras 23 & 25)

Case(s) referred to:
Chua Lip Kong v. Director General of Inland Revenue [1981] 1 LNS 157 PC ***(refd)***
C *Commissioner of Inland Revenue v. Challenge Corporation Ltd [1986] STC 548* ***(refd)***
Edwards v. Bairstow & Harrisons [1955] 36 TC 207 ***(refd)***
Lim Joo Thong v. Koperasi Serbaguna Taiping Barat Bhd [1998] 1 CLJ 947 CA ***(refd)***
D *Lower Perak Co-operative Housing Society Bhd v. Ketua Pengarah Hasil Dalam Negeri [1994] 3 CLJ 541 SC* ***(refd)***
Sabah Berjaya Sdn Bhd v. Ketua Pengarah Jabatan Hasil Dalam Negeri [1999] 3 CLJ 587 CA ***(foll)***

Legislation referred to:
E Income Tax Act 1967, s. 140(1)
Real Property Gains Tax Act 1976, ss. 3(1), 7(1)(a), 25(2), (3)

For the applicants - Ahmad Isyak Mohd Hassan (Seri Hanem Mohd Ayob with him); Inland Revenue Malaysia
F *For the respondent - Sudharsanan R Thillainathan; M/s Shook Lin & Bok*

Reported by S Barathi

JUDGMENT

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Zaleha Yusof J:

[1] This is an appeal by the Director General of Inland Revenue (hereafter "DGIR") against the Deciding Order of the Special
H Commissioners of Income Tax (hereafter "the SCIT"). The Deciding Order of the SCIT is as follows:

> … ADALAH DIPUTUSKAN bahawa rebat yang diberikan adalah dibenarkan sebagai potongan dalam menentukan harga lupusan di bawah Akta Cukai Keuntungan Hartanah 1976.

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MAKA DENGAN INI ADALAH

DAN DIPERINTAHKAN SELANJUTNYA bahawa DIPERINTAHKAN bahawa rayuan ini dibenarkan Notis Taksiran bertarikh 10 Oktober 2006 yang menunjukkan RM227,005.40 dan Notis Taksiran bertarikh 12 Oktober 2006 yang menunjukkan RM507,816.80 sebagai cukai yang kena dibayar bagi Tahun Taksiran 2006 dipinda sejajar dengan keputusan di atas.

[2] The appellant before SCIT was Bee Garden Holdings Sdn Bhd (hereinafter "Bee Garden").

[3] SCIT in their case stated had stated that as a result of the evidence before them, the following facts were admitted and proved:

i. The appellant entered into 2 Sale and Purchase Agreements namely:

   (a) a Sale and Purchase Agreement dated 8th March 2006 for the disposal of Lot 111 in the Mines Resort City to Bright Memory Sdn Bhd ("Lot 111 Purchaser").

   (b) a Sale and Purchase Agreement dated 26th April 2006 for the disposal of Lot 112 in the Mines Resort City to Chow Kok Meng and Chow Choi Har ("Lot 112 Purchasers").

ii. For Lot 111, the sale and purchase price as per the Sale and Purchase Agreement dated 8th March 2006 was RM2,887,812.00.

iii. For Lot 112, the sale and purchase price as per the Sale and Purchase Agreement dated 26th April 2006 was RM2,392,621.00.

iv. A rebate of RM748,692.00 was given by the appellant to the Lot 111 Purchase in connection with the disposal of Lot 111. The rebate was given in the form of a deduction from the purchase price. This is evident from:

   (a) the confirmation to purchase signed, on the one hand, by or on behalf of the Lot 111 Purchaser and, on the other hand, the appellant,

   (b) a credit note issued by the appellant to the Lot 111 Purchaser,

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(c) the letter from the Solicitors of the appellant in the conveyance of Lot 111, setting out the Statement of Account for Lot 111,

(d) the documents collectively marked C1A,

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(e) clause 4.1 of the Sale and Purchase Agreement dated 8th March 2006, and

(f) the uncontradicted and unchallenged oral evidence given by En. Lee Kim Heong and En. Yogeswaran a/l Bala Krishnan that the rebates were indeed given.

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Hence, the true consideration received by the appellant for the disposal of Lot 111 was RM2,139,120.00. This amount was arrived at after deducting the rebate of RM748,692.00 from the purchase price of RM2,887,812.00.

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v. A rebate of RM609,301.00 was given by the appellant to the Lot 112 Purchasers in connection with the disposal of Lot 112. The rebate was given in the form of a deduction from the purchase price. This is evident from:

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(a) the confirmation to purchase signed, on the one hand, by or on behalf of the Lot 112 Purchasers and, on the other hand, the appellant,

(b) a credit note issued by the appellant to the Lot 112 Purchasers,

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(c) the letter from the Solicitors of the appellant in the conveyance of Lot 112, setting out the Statement of Account for Lot 112,

(d) the documents collectively marked C2A,

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(e) clause 4.1 of the Sale and Purchase Agreement dated 26th April 2006, and

(f) the uncontradicted and unchallenged oral evidence given by En. Lee Kim Heong and En. Yogeswaran a/l Bala Krishnan that the rebates were indeed given.

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Hence, the true consideration received by the appellant for the disposal of Lot 112 was RM1,783,320.00. This amount was arrived at after deducting the rebate of RM609,301.00 from the purchase price of RM2,887,812.00.

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vi. The true consideration received by the appellant from the Lot 111 and 112 Purchasers was RM2,139,120.00 and RM1,783,320.00 respectively ie, net of the rebate.

vii. The rebates were given by the appellant as part of its marketing and pricing strategy to secure the agreement of the Lot 111 Purchaser and the Lot 112 Purchasers to purchase the said Lots. The appellant had no connection with the Lot 111 Purchaser and the Lot 112 Purchasers. The transactions between them were at arm's length.

viii. The Sale and Purchase Agreements did not disclose the amount of the rebates given:

(a) for the purposes of the appellant's pricing and marketing strategy in an attempt to prevent that information (ie, the net purchase price) from escaping or leaking into the public domain, and

(b) at the request of the Lot 11 and Lot 112 Purchasers in order to facilitate their financing requirements.

ix. The appellant submitted Form CKHT 1 dated 4th April 2006 for Lot 111 together with the Sale and Purchase Agreement dated 8th March 2006 to the respondent's office on 6th April 2006.

x. For lot No. 112, the appellant submitted Form CKHT 1 dated 8th May 2006 together with the Sale and Purchase Agreement dated 26th April 2006 to the respondent's office on 10th May 2006.

xi. The respondent then raised the assessment on both Lots as follows:

Lot No	Date of Assessment	Amount (RM)
111	10th October 2006	227,005.40
112	12th October 2006	280,811.40
		507,816.80

xii. In essence, the respondent adjusted the disposal price by disallowing the deduction of the rebate from the purchase price. In other words, the respondent disregarded the rebates given by the appellant in computing the disposal price for Lot 111 and Lot 112.

A xiii. As a result of the said adjustments by the respondent, the appellant was required to pay an additional/extra sum of RM332,528.70 as tax and RM33,252.87 as penalties (under section 21(4) of the Act) in connection with the disposal of Lot 111 and Lot 112.

B xiv. The appellant being dissatisfied with the assessments filed an appeal to the Special Commissioners of Income Tax *via* Form Q dated 8th January 2007 and hence the appeal before the Special Commissioners of Income Tax on 11th November 2008.

C **[4]** However in its ground of decision before the Deciding Order, the SCIT had stated *inter alia* the following:

> However the facts admitted and proved during the trial, should there be any rebate given to the purchaser by the appellant, the
> D disposal price less the rebate has been duly determined way before the signing of the sale and purchase agreement and therefore it must be stated in the Sale and Purchase Agreement.
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> …
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> E Whether the giving of rebate is common practice in the industry or not is a different issue as, if the appellant really gave rebate to its consumer, then it should be done properly ie:
>
> i. If the rebates were given before the execution of the sale and purchase agreement, then the price less the rebate should be
> F stated in the sale and purchase agreement.
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> ii. If the rebate were only given after the sale and purchase agreement, then supplementary agreement of notification must be given as soon as possible to the respondent.
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> G Hence we unanimously held that the appellant has failed to discharge the onus cast on them under para 13 Schedule 5 of the Income Tax Act 1967 that the assessment raised is erroneous or excessive. We unanimously dismissed the appeal and the Notice of Assessment is hereby confirmed.

H **DGIR's Contention**

[5] The DGIR contends that the deduction of the rebate from declared selling price must not be allowed because the Sales and Purchase Agreements (SPAs) do not disclose the amount or sum
I of the rebates given. Further the DGIR contends that the

Deciding Order of the SCIT as shown at p. 15 of the case stated is wrong as the conclusion or decision cannot be supported by the findings.

[6] The DGIR further argues that upon receiving the Form CKHT 1 together with the sale and purchase agreement, the DGIR must have noted that there exist two prices for one property or lot and the existence of the two prices is enough to raise doubt in the mind of the DGIR so as to invoke its power vested under s. 25(2) of the Real Property Gains Tax Act 1976 (Act 169). Section 25(2) of the Act 169 states:

> The Director General, where he has reason to believe that any transaction has the direct or indirect effect of:
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> (78) altering the incidence of tax which is payable or suffered by or which would otherwise have been payable or suffered by any person;
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> (b) relieving any person from any liability which has arisen or which would otherwise have arisen to pay tax or to make a return;
>
> (78) evading or avoiding any duty or liability which is imposed or would otherwise have been imposed on any person by this Act; or
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> (78) hindering or preventing the operation of this Act in any respect,
>
> may, without prejudice to such validity as it may have in any other respect or for any other purpose, disregard or vary the transaction and make such assessments as he considers just and proper in the circumstances.

[7] Section 25(2) above gave the power to the DGIR to disregard any transactions between parties if the DGIR believes that the transactions have the direct or indirect effect to the tax payable by a person. As to the meaning of transaction, sub-s. (3) of s. 25 defines the word "transaction" as:

> In this section "transaction" means any trust, grant, covenant, agreement, arrangement or other disposition or transaction made or entered into (whether before or after the commencement of this Act), and includes a transaction entered into by two or more persons with another person or persons.

[8] It is the DGIR's submission that by having two different prices on one lot, ie, price as stated in the sale and purchase agreement and price stated in the Form CKHT 1, the DGIR has every reasons to belief that the transaction has the direct or indirect effect to the tax payable and the decision of the DGIR to disregard the price stated in the CKHT 1 form is justifiable.

Bee Garden's Contention

[9] It is Bee Garden's contention that the rebates given form part of the consideration for the disposal of the said lots and therefore form part of the disposal price. It cites s. 3(1) of Act 169 which states that a tax, to be called real property gains tax, shall be charged in accordance with this Act (Act 169) in respect of chargeable gain accruing on the disposal of any real property accruing on the disposal of any real property. Further, according to s. 7(1)(a) of the Act, a "chargeable gain" occurs when the disposal price of a particular real property exceeds its acquisition price. It further submits that the assessments made by the DGIR were erroneous because the DGIR's computation of the disposal price included a sum that the taxpayer did not in fact receive towards payment for the said lots. Hence, the effect of the said assessments was to tax the taxpayer on an unrealised gained ie, a gain that did not accrue to the taxpayer.

[10] Bee Garden also submits that there is no basis at all for the DGIR's contention that the rebates amounted to tax avoidance which the DGIR was entitled to disregard by reason of s. 25(2) of the Act 169. In this connection, it contends that the finding of facts by the SCIT was that the rebates were actually given and that the taxpayer was not merely pretending to give the rebates. The rebate, which was in the form of a deduction from the purchase price, reduced the purchase price actually received by the taxpayer from the purchasers in connection with the disposal of the said lots.

Issue

1. Whether the conclusion made by the SCIT before arriving at the Deciding Order is correct as the conclusion contradicts its earlier findings.

2. Whether for the purpose of Act 169, the disposal of Lot 111 and Lot 112 in the Mines Resort City should be (i) the declared selling price as per the sale and purchase agreements less the amount of rebate (in the form of a deduction from the declared selling price) given by Bee Garden ie, the taxpayer (as per the Bee Garden's contention) or (ii) the declared selling price as per the sale and purchase agreements (as per the DGIR's contention).

Decision

[11] The Deciding Order is clearly in favour of Bee Garden. However there is inconsistency between the Deciding Order and the grounds. Abang Iskandar J (as he then was) had on 27 July 2011 ordered that the case stated be sent back to SCIT for its Ground of Decision be redrafted to be in line with the Deciding Order. However the members of panel who heard the matter had all retired. Hence when the matter came back to me, I decided to hear the appeal proper so that not to delay the matter further.

[12] I have scrutinised the cause papers and submissions made by the parties. It puzzles me, how could the SCIT come to a conclusion in para. 9 of the case stated that there was no evidence of rebate as it is not stated in the SPA; when earlier on, in para. 6 it has made a finding of facts when it stated that amongst fact that were proven and admitted were rebates given by Bee Garden to the purchasers and that the actual amount received by Bee Garden was the amount after deducting the rebate which is less than the amount stated in the SPAs.

[13] To me, the authorities cited by the learned Senior Federal Counsel for the DGIR are actually for or in support of Bee Garden's case. For eg; Lord Diplock when delivering the unanimous judgment of the Privy Council in *Chua Lip Kong v. Director General of Inland Revenue* [1981] 1 LNS 157; [1982] 1 MLJ 235 at p. 236 had stated the following:

> Findings of primary facts by the Special Commissioners are unassailable. They can be neither overruled nor supplemented by the High Court itself; occasionally they may be insufficient to enable the High Court to decide the question of law sought to be raised by the Case Stated, but in that event it will be necessary for the Case to be remitted to the Commissioners themselves for

A further findings. It is the primary facts so found by the Commissioners that they should set out in the Case Stated as having been "admitted or proved".

From the primary facts admitted or proved the Commissioners are entitled to draw inferences; such inferences may themselves be
B inferences of pure fact, in which case they are as unassailable as the Commissioners' finding of a primary fact; but they may be, or may involve (and very often do), assumptions as to the legal effect or consequences of primary facts, and these are always questions of law upon which it is the function of the High Court
C on consideration of a Case Stated to correct the Special Commissioners if they can be shown to have proceeded upon some erroneous assumption as to the relevant law.

[14] *Chua Lip Kong*'s case (*supra*) and a House of Lord's decision in *Edwards v. Bairstow & Harrisons* [1955] 36 TC 207 have been
D adopted by the Supreme Court in *Lower Perak Co-operative Housing Society Bhd v. Ketua Pengarah Hasil Dalam Negeri* [1994] 3 CLJ 541; [1994] 2 MLJ 713. Viscount Simmonds in *Edwards*' case (*supra*) had held at p. 224 the following:

E For it is universally conceded that, though it is a pure finding of fact, it may be set aside on grounds which have been stated in various ways but are, I think, fairly summarized by saying that the court should take that course if it appears that the Commissioners have acted without evidence or upon a view of the facts which could not reasonably be entertained.
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[15] Lord Radcliffe in the same case held at p. 229, the following:

When the case comes before the court it is its duty to examine the determination having regard to its knowledge of the relevant law. If the case contains anything *ex facie* which is bad law and
G which bears upon the determination, it is obviously, erroneous in point of law. But, without any such misconception appearing *ex facie*, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those
H circumstances, too, the court must intervene. It has no option but to assume that there has been some misconception of the law that this has been responsible for the determination. So there, too, there has been error in point of law.

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[16] Hence, the Special Commissioners conclusion in para. 9 which held that the respondent had failed to discharge the burden was clearly contrary to its own finding earlier on as stated in para. 6. The Special Commissioners to me had clearly erred when after finding that those earlier mentioned facts were admitted and proven now reached a different conclusion. To me, the Special Commissioners had come to a conclusion which no reasonably Special Commissioners could have reached.

[17] Facts admitted or proven are primary facts found by the SCIT and these findings of primary facts are unassailable. Therefore when the SCIT came to the conclusion they made in para. 9 of the case stated, it would appear that the SCIT had acted without evidence or upon a view of the facts which could not reasonably entertained. Hence, I am of the view that the SCIT had erred when it reached the conclusion stated in para. 9 which contravenes the finding of facts in para. 6 and the Deciding Order.

[18] Further, as I have mentioned above, Abang Iskandar J (as he then was) had on 27 July 2011 ordered that the Ground of Decision of the case stated be redrafted to be in line with the Deciding Order. In other words, the learned judge was of the view that the Ground of Decision was wrong. This order made by the learned judge, on the application of Bee Garden, was not appealed against by the DGIR. In *Lim Joo Thong v. Koperasi Serbaguna Taiping Barat Bhd* [1998] 1 CLJ 947; [1998] 1 MLJ 657, the Court of Appeal had *inter alia* held that the order which was not appealed on, was final and binding on the parties, and must therefore be discharged as a whole. In this instant case, as the DGIR did not appeal against the Order of 27 July 2011, that Order still stands and binding on them. Only thing that the Order cannot be discharged as a whole as members of the panel of the SCIT who heard the matter had all retired. But that in my view does not affect the validity or the binding effect of the Order.

[19] On the second issue, para. 5(1) of Schedule 2 of Act 169 reads as follows:

> Subject to sub-paragraph (2), the disposal price of an asset is the amount or value of the consideration in money or money's worth for the disposal of the asset less:

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a. the amount of any expenditure wholly and exclusively incurred on the asset at any time after its acquisition by or on behalf of the disposer for the purpose of enhancing or preserving the value of the asset, being expenditure reflected in the state or nature of the asset at the time of the disposal;

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b. the amount of any expenditure wholly and exclusively incurred at any time after his acquisition of the asset by the disposer in establishing, preserving or defaming his title to, or to a fright over, the asset; and

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c. the incidental costs to the disposer of making the disposal.

[20] Sub-paragraph 2 and items (a), (b) and (c) above are not relevant for our purpose. The real issue in controversy here is the meaning of the expression "consideration". I am of the view that
D the expression "consideration" should be given its plain and ordinary meaning. In this connection, the *Shorter Oxford English Dictionary on Historical Principles* (3rd edn.), defines "consideration" as:

Something given in payment.

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[21] Hence, in this case the expression "consideration", in its plain and ordinary sense, must mean an amount or a sum actually paid by the purchasers of the said lots to the taxpayer ie, Bee Garden herein, in connection with the disposal of the said lots. In the light of the findings of fact by the SCIT there can be no
F dispute that the rebates given did not form part of the amount actually paid by the purchasers of the said lots to the taxpayer ie, Bee Garden herein. Consequently, the rebates cannot form part of the consideration received by Bee Garden in connection with the disposal of the said lots.

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[22] I am also of the view that the effect of the finding of facts by the SCIT as found in para. 6 of case stated makes the fact that the amounts of the rebate were not disclosed in the SPAs or in a supplemental agreement thereto is legally inconsequential.

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[23] Section 25(2) of the Act 169 is actually for avoidance of tax. In *Sabah Berjaya Sdn Bhd v. Ketua Pengarah Jabatan Hasil Dalam Negeri* [1999] 3 CLJ 587, the Court of Appeal considered the meaning of tax avoidance in the context of s. 140(1) of the
I Income Tax Act 1967 (Act 53). It is important to note here that

s. 140(1) of the Act 53 and s. 25(2) of the Act 169 are *in pari materia*. Hence the principles expressed in *Sabah Berjaya*'s case (*supra*) should apply with equal force to s. 25(2) of the Act 169.

[24] As submitted by the learned counsel for Bee Garden, in *Sabah Berjaya Sdn Bhd*'s case (*supra*), the Court of Appeal quoted with approval the following passage from Lord Templeman's majority opinion of the Board (Privy Council) in the case of *Commissioner of Inland Revenue v. Challenge Corporation Ltd* [1986] STC 548 in which his Lordship said that tax is avoided when:

> ... a tax advantage is derived from an arrangement when the taxpayer reduces his liability to tax without involving him in the loss or expenditure which entitles him to that reduction. The taxpayer engaged in tax avoidance does not reduce his income or suffer a loss or incur expenditure but nevertheless obtains a reduction in his liability to tax as if he had.

[25] In the instant case, as in the case before the Court of Appeal and as in the case before the Privy Council, the rebates reduced the taxpayer's ie, Bee Garden's gains in circumstances in which the Act by way of para. 5(1) of Schedule 2 to the Act 169 clearly affords a reduction in tax liability. It is clear from *Sabah Berjaya Sdn Bhd*'s case (*supra*) that s. 140(1) of Act 53 does not apply where the taxpayer obtains a tax advantage by reducing his income or by incurring expenditure in circumstances in which the taxing statute affords a reduction in tax liability.

[26] Accordingly, I agree with the learned counsel for Bee Garden that since the SCIT found that the rebates were given by the taxpayer to the purchasers of the said lots, this clearly, with respect, is not a case to which s. 25(2) of the Act 169 applies.

[27] For these reasons, I am of the opinion that this appeal should be dismissed. Hence this appeal is dismissed.